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In The

Supreme Court of the United States

Docket No. 72-738

LOUIS PARISI,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-

LOUIS PARISI,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Statement

To: THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT.

Petitioner, LOUIS PARISI, respectfully requests that a writ of certiorari issue to review the judg-

ment of the United States Court of Appeals for the Second Circuit rendered on October 19, 1972, which affirmed a judgment of the United States District Court for the Eastern District of New York convicting petitioner of conspiracy and transporting forged checks and sight drafts in interstate commerce, knowing the same to have been falsely made and forged in violation of Title 18 U.S.C. Sections 371, 2314 and 2.

Opinions Below

The conviction was affirmed by the United States Court of Appeals for the Second Circuit without an opinion.

The district court wrote no opinion.

Jurisdiction

The judgment of the Court of Appeals for the Second Circuit was entered on October 19, 1972. A copy is annexed hereto as Appendix A.

This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

Question Presented

Whether the petitioner's handwriting exemplars, which were introduced into evidence at trial, were seized in violation of petitioner's constitutional rights.

Statement of the Case

After a jury trial in the United States District Court for the Eastern District of New York petitioner was convicted of conspiracy and transporting forged checks and sight drafts in interstate commerce in violation of 18 U.S.C. Sections 371, 2314 and 2. The United States Court of Appeals for the Second Circuit affirmed that judgment of conviction on October 19, 1972.

At the trial, the Government introduced as evidence, a death certificate showing that a Mr. Benjamin Noden had died of natural causes on October 3, 1967.* (T18-19). Thereafter, petitioner's co-defendant, Mr. Weinstein, testified that he opened a bank account in New York, at the petitioner's request, by representing himself to be the deceased Mr. Noden. He then presented Mr. Noden's bank book and executed sight drafts thereby transferring Mr. Noden's money from a California bank to the New York bank. He also testified that he signed checks drawn on the New York bank, which he said were prepared by the petitioner, and delivered those checks to the petitioner (T51-62).

Mr. Weinstein's testimony was corroborated by a handwriting expert who testified that he compared the handwriting exemplars of the petitioner with the checks in question and found that the petitioner prepared those checks (T302-303).

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* Transcript of Trial

Argument

I.

THE PETITIONER'S HANDWRITING EXEMPLARS WERE SEIZED IN VIOLATION OF HIS FOURTH AMENDMENT RIGHTS.

Samples of the petitioner's handwriting were received in evidence over defense objection (T281-282). We submit that this evidence was received in contravention of the petitioner's Fourth Amendment rights.

On December 12, 1969, an FBI Agent met petitioner at an FBI office and advised him of his rights under the Fifth Amendment to the U.S. Constitution (T277-278). Petitioner, however, was not advised of his rights under the Fourth Amendment, or more particularly, of his right to refuse to furnish handwriting exemplars at that time. In violation of these rights and in the absence of counsel the defendant was required to fill out blank checks as dictated to him by the FBI Agent (T278-283). Thereafter the petitioner was indicted under the original indictment 70 CR 717 on October 22, 1970.

When the defense objected to the receipt of this evidence (Exhibit 30) the court overruled the objection stating:

> "The law requires a person under circ-circumstances and conditions such as we have here to give specimens of his handwriting" (T279).

We submit that the court's ruling was error.

Argument

In United States v. Harris, 453 F.2d 1317 (8 Cir. 1972), a case of first impression, the Court of Appeals held that the taking of handwriting samples from a criminal suspect is a search within the meaning of the Fourth Amendment. The securing of these samples, the court said, was an examination of the person with a view to obtaining evidence of guilt, thus it must meet the Fourth Amendment's standard of reasonableness and must be preceded by some kind of warnings. The court then found that the handwriting samples taken from the defendant Long were the product of an unreasonable search and accordingly reversed the defendant's conviction.

In conflict with the Eighth Circuit's decision in Harris, however, the Second Circuit held in United States v. Doe, 457 F.2d 895 (2 Cir. 1972) that the taking of a reasonable number of handwriting exemplars did not constitute a search and seizure subject to the protections of the Fourth Amendment. In commenting upon the Harris decision the Second Circuit stated (457 F.2d at 900).

> "While the Eighth Circuit concluded that, in addition to the police-citizen encounter being a seizure, the taking of a handwriting exemplar was itself a search, we find the court's reasoning unconvincing on this point."

We submit that the Harris decision is the correct interpretation of the protections afforded by the Fourth Amendment. In any event, however,

the conflict between the Circuits of this substantial question of constitutional law should be resolved by the Supreme Court.

Conclusion

The petition for a writ of certiorari should be granted.

October , 1972

Respectfully submitted

s/ Robert L. Rosenthal
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Appendix A - Decision

(Filed October 19, 1972)

UNITED STATES COURT OF APPEALS

For the

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the nineteenth day of October, one thousand nine hundred and seventy-two.

Present: HON. WALTER R. MANSFIELD,

HON. JAMES L. OAKES,

HON. WILLIAM H. TIMBERS,
Circuit Judges,

- -

United States of America,

Plaintiff-Appellee,

v.

Matthew Weinstein, Louis Parisi and
Lynn Weinstein,

Defendants,

Louis Parisi,

Defendant-Appellant.

- -

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO,
Clerk